

REMARKS**I. RESPONSE TO EXAMINER'S ARGUMENTS REJECTING APPLICANT'S DECLARATION**

Examiner rejected Applicant's Declaration filed on May 17, 2004 and associated arguments made in support of overcoming the Fitzsimmons et al reference in the July 17, 2004 Office Action (herein after "7-17-04 OA") on page 4-4, clause 3a-b based on insufficient evidence to establish a conception of the invention prior to the effective date of the Fitzsimmons et al reference.

Applicant respectfully traverses the Examiner's rejection of Applicant's Declaration filed on May 17, 2004 and associated arguments in support of overcoming the Fitzsimmons et al reference in the July 17, 2004 Office Action.

"The first of many to reduce an invention to practice around the same time will be the sole party to obtain a patent, *Radio Corp. of America v. Radio Eng'g Labs., Inc.*, 293 U.S. 1, 2, 21 USPQ 353, 353-4 (1934), **unless another was the first to conceive and couple a later-in-time reduction to practice with diligence from a time just prior to when the second conceiver entered the field to the first conceiver's reduction to practice.** *Hull v. Davenport*, 90 F.2d 103, 105, 33 USPQ 506, 508 (CCPA 1937)."

MPEP §2138.01 (Rev. 2, May 2004).

"The time charts apply to interference proceedings and are also applicable to declarations or affidavits filed under 37 CFR 1.131 to antedate references which are available as prior art under 35 U.S.C. 102(a) or 102(e). Note, however, in the context of 37 CFR 1.131, an applicant does not have to show that the invention was not abandoned, suppressed, or concealed from the time of an actual reduction to practice to a constructive reduction to practice because

the length of time taken to file a patent application after an actual reduction to practice is generally of no consequence except in an interference proceeding. *Paulik v. Rizkalla*, 760 F.2d 1270, 226 USPQ 224 (Fed. Cir. 1985)."

MPEP §2138.01 (Rev. 2, May 2004).

"For purposes of analysis under 37 CFR 1.131, the conception and reduction to practice of the reference to be antedated are both considered to be on the effective filing date of domestic patent or foreign patent or the date of printed publication." MPEP §2138.01 (Rev. 2, May 2004).

Thus, the effective conception and reduction to practice (filing) date of the FITZSIMMONS reference is September 19, 2001, which is predated by Applicant's conception date of April 26, 2001.

Similar to party "A" as defined in MPEP §2138.01 (Rev. 2, May 2004), **Example 2, Applicant (party "A") should be awarded priority for Applicant's invention over party "B", the Fitzsimmons reference.**

"A is awarded priority in an interference, or antedates B [Fitzsimmon's reference] as a reference in the context of a declaration or affidavit filed under 37 CFR 1.131, if A can show reasonable diligence from TD (a point just prior to B's conception) until Rc because A conceived the invention before B, and diligently constructively reduced the invention to practice even though this was after B reduced the invention to practice."

MPEP §2138.01 (Rev. 2, May 2004), Example 2.

Like party "A", Applicant first conceived of the invention on April 26, 2001, five months prior to September 19, 2001, the Fitzsimmons effective date of

conception and reduction to practice . Additionally, like party "A", Applicant diligently reduced the invention to practice between the conception date of April 26, 2001 and the filing date of January 8, 2002.

Evidence of Applicant's conception date of April 26, 2001 is provided in EXHIBIT B, Applicant's 37 CFR 1.131 affidavit dated May 5, 2004 that was originally submitted along with Applicant's Amendment and Response filed on May 17, 2004. Corroborating evidence of Applicant's April 26, 2001 conception date is additionally provided in attached EXHIBIT A, which was first referenced in Applicant's Amendment and Response filed on May 17, 2004. EXHIBIT A is an invention disclosure dated April 26, 2001 that recites features such as a PR cup, including a transparent material which can be quartz or glass. The features of the "transparent material" are recited in Applicant's Claims 1-13, 15-27, and 29-32.

Thus, Applicant respectfully requests reconsideration of Applicant's 37 CFR 1.131 affidavit dated May 5, 2004. In light of the Applicant's affidavit and associated supporting evidence, Examiner's rejection as set forth in the 7-17-04 OA on page 4, clause 3a is rendered moot.

Additionally, the issues set out in the Examiner's remarks on OA, page 5, clause 3b are moot in view of the 37 CFR §1.131 affidavit attached as EXHIBIT B and the associated invention disclosure attached as EXHIBIT A which removes Fitzsimmons as prior art.

II. Claim Rejections of 35 U.S.C. §103

The Examiner quoted the following section of 35 U.S.C. 103 § (a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject

matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The Examiner rejected claims 1-13, 15-27, and 29-32 under 35 U.S.C. 103 § (a) as being unpatentable over Urayama et al (JP-40-5217881 A) in view of Fitzsimmons et al (U.S. Patent No. 6,493,078) and Nakano et al (6,613,588).

Regarding claims 1, 14-16, 17, and 29-30, the Examiner argued that Urayama et al discloses a resist coater with an evaluation unit for detecting dust quantity of resist film on the wafer which has all the features of the present invention, except that the coater cup comprises a transparent material.

The Examiner argued, however, that such a feature is known in the art as taught by Fitzsimmons et al. The Examiner asserted that Fitzsimmons et al is from the same field of endeavor and teaches that a part of the coating bowl (citing reference numeral 105 of Fitzsimmons) is made of transparent materials (citing transparent window and reference numerals 120, 220, 32 of Fitzsimmons) so that the detector (citing reference numeral 131 of Fitzsimmons) is located outside of the chamber for monitoring the substrate (citing reference numerals 115, figures 2, 3, 5, 6, 9 and column 4, lines 29-31 and column 6, lines 40-42 of Fitzsimmons).

The Examiner argued that it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Urayama et al by using a transparent material for the coater bowl as taught by Fitzsimmons so that the light source and the detector are located outside of the coater. The Examiner argued that the rational for this modification would have arisen from the fact that by using a transparent material or window for the coating and positioning the detector and light source outside of the coater would prevent the damages of the light source and detector due to the heat, dirt and moisture inside the coater.

The Examiner admitted that Urayama does not teach that the coating device is automatically terminated when the amount of dust exceeds a predetermined level. The Examiner argued, however that such a feature is known in the art as taught by Nakano et al. The Examiner argued that Nakano et al teaches that the plasma processing device with a particle detection optical system in which the etching operation can be halted if the total number of particles generated exceeds a reference value (citing column 9, lines 21-27 and column 18, lines 44-52 of Nakano).

The Examiner therefore argued that it would have been obvious to one having ordinary skill in the art to include in Urayama et al a terminating system as taught by Nakano et al. The Examiner argued that the rationale for this modification would have arisen from the fact that using such system would alert the operator know when the processing chamber need to be cleaned or maintenance.

Regarding claim 3, the Examiner argued that the laser source is attached to the coater cup (citing Figure 1 of Urayama et al.).

Regarding claims 4 and 18, the Examiner referred to Urayama's abstract for resist coater.

Regarding claims 2, 5-7, 12-13, 19-21, 26-27, the Examiner referred to Urayama's abstract for a laser source (citing reference numeral 10 of Urayama) and a laser detector (citing reference numeral 11 of Urayama). The Examiner therefore argued that it would have been obvious to one having ordinary skill in the art at the time the invention was made to use an edge emitting laser or a solid-state semiconductor light emitter because they would function in the same manner. The Examiner asserted that a substitution of one for another is generally recognized as being within the level of ordinary skill in the art.

Regarding claims 8 and 22, the Examiner referred to Figure 1 of Urayama for a spindle (citing reference numeral 15 of Urayama).

Regarding claims 9 and 23, the Examiner referred to Urayama's abstract for detecting dust.

Regarding claims 10, 11 and 24-25, the Examiner argued that it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the particle detection systems of Urayama for detecting the photoresist dust as a result of a wafer spin coating operation because the device would not function in the same manner.

Regarding claims 31 and 32, the Examiner argued that it would have been obvious to one having ordinary skill in the art at the time the invention was made to include in Urayama one or more additional coater bowls if additional inspection is desired.

Applicant respectfully disagrees with this assessment and submits that the Examiner's arguments with respect to claims 1-13, 15-27, and 29-32 are rendered moot in light of the removal of Fitzsimmons, et al. as a prior art reference for purposes of 35 U.S.C. § 103(a). See Section I, supra, discussing removal of Fitzsimmons, et al. as a prior art reference.

Every rejection of claims 1-13, 15-27, and 29-32 under 35 USC §103 as recited in the 7-16-04 OA, page, pages 2-4, clauses 1-2 are rendered moot in light of Applicant's 37 CFR §1.131 affidavit (Exhibit B) and attached invention disclosure (Exhibit A).

Additionally, all arguments set out in Applicant's Communications filed on December 22, 2003 and on May 17, 2004 are herein incorporated by reference.

Therefore, based on the foregoing, the Examiner's arguments with respect to Fitzsimmons et al and the rejection to claims 1-13, 15-27, and 29-32 are rendered moot. In light of the removal of Fitzsimmons as a proper prior art reference under 35 U.S.C. § 103(a), the Applicant submits that the arguments presented in the communication filed on both December 22, 2003, and May 17, 2004 are no longer moot and should be reconsidered and applied to the rejections set forth in the present office action. Applicant therefore requests reconsideration of the arguments presented in the communication to the Office dated December 22, 2003 and May 17, 2004.

III. Conclusion

In view of the foregoing discussion, the Applicant has responded to each and every rejection of the Official Action. The Applicant has clarified the structural distinctions of the present invention by amendments herein. The foregoing discussion and amendments do not present new issues for consideration and that no new search is necessitated. Such amendments are supported by the specification and do not constitute new matter. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejections under 35 U.S.C. §103, and further examination of the present application.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned representative to conduct an interview in an effort to expedite prosecution in connection with the present application.

Respectfully submitted,


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